

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EDWARD MCMURRY,

Defendant-Appellant.

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UNPUBLISHED

June 23, 2000

No. 213416

Wayne Circuit Court

Criminal Division

LC No. 97-007272

Before: Hoekstra, P.J., and Cavanagh and White, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of possession of less than twenty-five grams of cocaine, MCL 333.7403(2)(a)(v); MSA 14.15(7403)(2)(a)(v), and sentenced to two years' probation. He appeals as of right. We affirm.

Defendant first claims that the trial court erred in denying his motion to suppress evidence of the cocaine. We review a trial court's ultimate decision on a motion to suppress evidence de novo, but the findings of fact are reviewed for clear error. *People v Parker*, 230 Mich App 337, 339; 584 NW2d 336 (1998). Giving deference to the trial court's determination that the police officer's testimony at the suppression hearing was more credible, we conclude that it properly denied defendant's motion to suppress.

The threshold issue we must decide is when defendant was seized within the meaning of the Fourth Amendment. *People v Shabaz*, 424 Mich 42, 56-57; 378 NW2d 451 (1985). A seizure occurs when, "in view of all the circumstances surrounding an encounter with the police, a reasonable person would have believed that the person was not free to leave." *People v Shankle*, 227 Mich App 690, 693; 577 NW2d 471 (1998). When a police officer approaches a person and seeks voluntary cooperation through noncoercive questioning, the person is not seized. *Id.* at 693. Merely asking for identification does not transform an encounter into a seizure, at least in circumstances where there are no intimidating circumstances compelling cooperation. *Id.* at 697.

The testimony of the police officer indicated that he walked to the van, which was obstructing traffic, asked defendant for a driver's license and registration, and then ran a LEIN check. We are not

persuaded that this conduct amounted to a seizure. Rather, affording deference to the trial court's assessment of credibility, we conclude that defendant was not seized until after the LEIN check revealed an outstanding warrant for defendant's arrest, whereupon defendant was then taken into custody.

Furthermore, even if the initial police encounter in approaching the van could be viewed as a seizure, the limited seizure was lawful because, according to the police officer, the van was partially in the street and blocking the flow of traffic, thereby establishing probable cause to believe that a traffic violation occurred. MCL 257.676b; MSA 9.2376(2); *United States v Hartwell*, 67 F Supp 2d 784 (ED Mich, 1999). The subsequent police conduct of ascertaining defendant's identity and running the LEIN check was permissible because it was reasonably related to the scope of the initial seizure. *United States v Hill*, 195 F3d 258 (CA 6, 1999). See also *People v Williams*, 236 Mich App 610, 612; 601 NW2d 138 (1999).

Once the LEIN information revealed the presence of an outstanding warrant for defendant's arrest, the police officers could properly rely on this information as a basis for arresting defendant on the outstanding warrant. See e.g., *People v Bell*, 74 Mich App 270; 253 NW2d 726 (1977). The subsequent search of defendant's person was also proper as a search incident to the arrest. *People v Chapman*, 425 Mich 245; 387 NW2d 835 (1986); see also *People v Arterberry*, 431 Mich 381, 384; 429 NW2d 574 (1988). Further, the search of the purple bag found in defendant's pocket, being within his control, was also permissible. *People v Champion*, 452 Mich 92, 115; 549 NW2d 849 (1996). Thus, we find no error in the trial court's denial of defendant's motion to suppress.

Defendant also claims that he must be discharged because the verdict was against the great weight of the evidence and deprived him of due process. Defendant failed to preserve his challenge to the verdict based on the weight of the evidence because he did not raise this issue before the trial court in a motion for a new trial. *People v Noble*, 238 Mich App 647, 658; \_\_\_ NW2d \_\_\_ (1999), lv pending. The record only reflects that defendant's attorney made an oral motion for a judgment of not guilty after the jury announced its verdict, which the trial court denied without prejudice. Further, we are not persuaded that defendant's unpreserved claim warrants relief, where the court observed that the jury found the officers credible and the independent witness was effectively impeached.

We examine defendant's due process claim in the context of a challenge to the legal sufficiency of the evidence. Due process commands a directed verdict of acquittal when evidence is insufficient to find guilt beyond a reasonable doubt. *People v Lemmon*, 456 Mich 625, 633-634; 576 NW2d 129 (1998). Our review is de novo. *People v Hammons*, 210 Mich App 554, 556; 534 NW2d 183 (1995). A directed verdict is inappropriate if a rational trier of fact, considering the evidence in a light most favorable to the prosecution, could find the essential elements of the crime proven beyond a reasonable doubt. *Id.* at 556. Viewed in this manner, we find that the trial evidence was sufficient to enable the jury to find, as it did, that defendant possessed the cocaine. We will not interfere with the jury's determination of credibility. *People v*

*Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992); *Noble, supra* at 657. Hence, we reject defendant's claim that he was denied due process. Further,

Affirmed.

/s/ Joel P. Hoekstra  
/s/ Mark J. Cavanagh  
/s/ Helene N. White